

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 E) for Authority to Increase Revenue
Requirements to Recover the Costs to Replace Steam
Generators in Units 1 and 2 of the Diablo Canyon
Power Plant.

Application 04-01-009
(Filed January 9, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION FOR PROTECTIVE ORDER**

On August 20, 2004, Pacific Gas and Electric Company (PG&E) filed a motion to strike the pre-filed testimonies of David Schlissel, on behalf of The Utility Reform Network, Truman Burns, on behalf of the Office of Ratepayer Advocates, and James Weil, on behalf of Aglet Consumer Alliance as they relate to whether PG&E should, or should have, filed suit against Westinghouse to seek compensation for steam generator degradation. PG&E also filed a motion to have its motion to strike kept under seal. On August 23, 2004, PG&E filed a motion for a protective order regarding materials related to this issue. On September 16, 2004, I denied the motion to strike, and instructed PG&E to utilize non-disclosure agreements to protect the confidentiality of documents provided to parties. On October 8, 2004, PG&E filed an amended protective order. Upon further consideration, I find that a protective order is appropriate in this proceeding.

Information related to the issue of whether PG&E should, or should have sued Westinghouse regarding the steam generators should be subject to a protective order so that parties can fully address the issue in these proceedings without jeopardizing PG&E's ability to effectively pursue such a suit if the Commission orders one to be filed. Contract pricing information related to replacement of the steam generators should also be subject to a protective order because its release could harm PG&E's ability to

negotiate the lowest reasonable price from qualified bidders, which could ultimately result in higher costs to ratepayers. For these reasons, I will issue a protective order.

Therefore, **IT IS ORDERED** that:

1. "Westinghouse Information" is defined as: (a) the unredacted version of Pacific Gas and Electric Company's (PG&E) Motion to Strike Certain Testimony Of David Schlissel On Behalf Of The Utility Reform Network (TURN), Truman Burns On Behalf Of The Office Of Ratepayer Advocates (ORA), And James Weil On Behalf Of Aglet Consumer Alliance; (b) the unredacted version of intervenors' Response thereto; (c) the following exhibits introduced during evidentiary hearings: Exhibits PG&E-4, PG&E-11, PG&E-14, TURN-5, TURN-42, TURN-43, TURN-46, TURN-47, ORA-9, ORA-10, ORA-11, ORA-12 and ORA-13; (d) certain portions of oral argument and testimony regarding Westinghouse issues made during the evidentiary hearings held during September 23 to October 1, 2004, which portions of oral argument and testimony were identified as confidential during the evidentiary hearings, and all transcripts thereof; (e) any portions of PG&E's opening and reply briefs regarding Westinghouse issues; (f) PG&E responses to ORAs' Data Requests 12-05, 12-06, 12-10, 12-10Supp01, 12-11, 12-12, 12-13, 12-14, 12-14Rev01, 12-15, 12-16, 12-17, 12-21, 12-22, 12-23, 12-24, 12-25, 12-26, 12-27, 12-28, 12-29, 12-30, 12-31, 12-32, 12-33, and 13-01, submitted pursuant to Pub. Util. Code § 583; (g) PG&E responses to TURN Data Requests 1-22, 005-03, 005-03Rev01, 007-01, 007-02, 007-03, 007-04, and 007-05, submitted pursuant to a non-disclosure agreement pending and subject to issuance of a protective order; (h) any portions of any other party's opening and reply briefs that set forth the information contained in categories (a), (b), (c), (d), (e), (f) or (g) above, other than the information contained in the redacted versions of categories (a) and (b); and (i) any portions of any party's opening or reply comments on any proposed decision or alternate proposed decision that set forth the information contained in categories (a), (b), (c), (d), (e), (f) or (g) above other than the information contained in the redacted versions of categories (a) and (b).

2. "Bargaining Information" is defined as: (a) Exhibit ORA-1; (b) certain portions of oral testimony given during the evidentiary hearings held on September 23, 2004, which testimony was identified as confidential during the evidentiary hearing held that day; (c) the contracts between PG&E and Westinghouse ENSA regarding procurement of replacement steam generators; (d) any portion of any parties' opening and reply briefs that address the specific cost of the procurement contracts or the specific expected costs of the installation contracts; and (e) any portion of any parties' opening and reply comments on any proposed decision or alternate proposed decision that address the specific cost of the procurement contracts or the specific expected costs of the installation contracts.

3. All Westinghouse Information and Bargaining Information filed or submitted to the California Public Utilities Commission, including ORA, and any hearing transcripts containing Westinghouse Information or Bargaining Information, is subject to Pub. Util. Code § 583.

4. All pleadings constituting or reflecting Westinghouse Information, and all pleadings constituting or reflecting Bargaining Information, filed at the California Public Utilities Commission shall be filed under seal. Any such material filed with the Commission shall be tendered for filing in a sealed envelope stating on the outside that it is sealed pursuant to this Protective Order. Any such pleading shall include a face page that reads as follows:

WARNING: THIS DOCUMENT OR MATTER CONTAINED IN IT IS CONFIDENTIAL AND ITS USE RESTRICTED IN ACCORDANCE WITH A PROTECTIVE ORDER OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION IN APPLICATION NO. A.04-01-009. THE VIEWING, DISSEMINATION, RECORDING, OR COPYING OF THIS DOCUMENT, EXCEPT AS AUTHORIZED BY THE PROTECTIVE ORDER, IS A VIOLATION OF AN ORDER OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION. IT IS A VIOLATION OF THE PROTECTIVE ORDER TO SEPARATE THIS PAGE FROM THE DOCUMENT TO WHICH IT IS AFFIXED.

At the same time that any such pleading is filed under seal, the party filing such pleading shall file a redacted, public version of such pleading from which the Westinghouse Information and/or Bargaining Information has been redacted.

5. All Westinghouse Information shall be used by the parties to this proceeding solely for the purpose of participating in this proceeding, and shall not be provided by any party to this proceeding to any person or entity not a party to this proceeding except such person's or entity's attorneys in this proceeding for the purpose of representing such person or entity in this proceeding. A party to this proceeding may provide Westinghouse Information to any consultant or expert retained by such person or entity to assist in this proceeding only after such consultant or expert has executed the attached Protective Order Agreement. The restriction on disclosure of Westinghouse Information applies not only to disclosure of the designated Westinghouse Information itself, but to the contents of the documents identified as Westinghouse Information (other than the portions of unredacted pleadings that are not redacted in the public versions).

6. All Bargaining Information shall be used by the parties to this proceeding solely for the purpose of participating in this proceeding, and shall not be provided by any party to this proceeding to any person or entity not a party to this proceeding except such person's or entity's attorneys in this proceeding for the purpose of representing such person or entity in this proceeding. A party to this proceeding may provide Bargaining Information to any consultant or expert retained by such person or entity to assist in this proceeding only after such consultant or expert has executed the attached Protective Order Agreement. The restriction on disclosure of Bargaining Information applies not only to disclosure of the designated Bargaining Information itself, but to the contents of the documents identified as Bargaining Information (other than the portions of unredacted pleadings that are not redacted in the public versions). In addition, due to market concerns, Bargaining Information shall not be provided to Southern

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California Edison or San Diego Gas and Electric Company, notwithstanding their status as parties to this proceeding.

7. Within 30 days of the date that the Final Order of the Commission in this proceeding is no longer subject to judicial review, all parties, not including the Commission and any Commission employees, shall return to PG&E the originals and any copies of the documents identified in Paragraph 1, except that a party instead may destroy any such documents and certify to PG&E that the same have been destroyed by such date. The restrictions on disclosure of Bargaining Information shall expire two years from effective date of a final decision in this proceeding.

8. The obligations pertaining to confidentiality of the Westinghouse Information and Bargaining Information shall survive the termination of this proceeding.

9. Confidential treatment of the Westinghouse Information, as specified herein, shall expire four years from the effective date of a final decision in this proceeding. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff, except as provided herein, or on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

10. If PG&E believes that further protection of the Westinghouse information is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

11. Nothing in this Protective Order precludes parties to this proceeding from seeking Commission permission to publicly disclose Westinghouse Information or Bargaining Information, with notice and reasonable opportunity for PG&E to respond or oppose such public disclosure.

IT IS SO ORDERED.

Dated October 13, 2004, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL
Jeffrey P. O'Donnell

Administrative Law Judge

ATTACHMENT
PROTECTIVE ORDER AGREEMENT

I certify my understanding that (1) my access to Westinghouse Information and Bargaining Information, as those terms are defined in the Protective Order Re: Confidential Information in Application (A.) 04-01-009 ("Protective Order"), is provided to me pursuant to the terms and restrictions of said Protective Order, and (2) I have been given a copy of, and have read, that Protective Order and agree to be bound by it. I understand the protected information, or any notes, documents, memoranda containing such protected information: (a) shall not be disclosed to anyone other than in accordance with that Protective Order; (b) shall and may be used only for the purposes of the proceeding in A.04-01-009; and ((c) shall be returned to Pacific Gas and Electric Company (PG&E) within 30 days of the date that the Final Order of the Commission in this proceeding is no longer subject to judicial review, or destroyed and a certificate of destruction provided to PG&E by such date. I agree that my obligation to honor the confidentiality of protected information shall continue after the issuance of a final, non-appealable order disposing of the merits of A.04-01-009. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

Signature: _____ **Date:** _____

Name: _____

Reviewing Party: _____

Employer: _____

Position: _____

Business Address: _____

Business Phone: _____

(END OF ATTACHMENT)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion for Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated October 13, 2004, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.